

Arizona Department of Health Services
Special Supplemental Nutrition Program
for Women, Infants and Children (WIC)

VENDOR CONTRACT

THIS CONTRACT, entered into by and between

CORPORATE OR OWNERS(S) NAME(S)

Doing business as: _____
BUSINESS NAME

Located at: _____
STREET ADDRESS

CITY **COUNTY** **STATE** **ZIP + 4**

(hereinafter “Vendor”) and the Arizona Department of Health Services (hereinafter the “Department”) for the provision of Supplemental Foods to participants/authorized representatives in the Arizona Supplemental Nutrition Program for Women, Infants and Children (hereinafter “WIC”).

GENERAL TERMS

1. The purpose of this Contract is to provide retail outlets (hereinafter "Vendors") for the Federal Supplemental Nutrition Program for Women, Infants and Children (hereinafter "WIC"), and to provide terms and conditions for the Vendors and the Arizona Department of Health Services (hereinafter "Department") to follow during transactions arising out of this Contract.
2. This Contract becomes effective on October 1, 2002 or on the date signed by the Director of the Department or the Director's designee, whichever is later, and upon receipt by the Vendor of a WIC Vendor ID Number and two (2) Vendor ID stamps. This Contract shall expire September 30, 2005, unless it is otherwise subject to early termination or cancellation as described elsewhere in this Contract and the Vendor Manual.
3. This Contract shall not constitute a license or a property interest.
 - a. The Vendor has neither an obligation nor an entitlement to renew this Contract at the time of expiration or termination;
 - b. The Department is under no obligation to renew or re-authorize this Contract at the time of expiration or termination.
 - c. If the Vendor wishes to continue to be authorized beyond the period of its current agreement, the Vendor must reapply for authorization. If a Vendor is disqualified, the State agency will terminate the Vendor's agreement, and the Vendor will have to reapply in order to be authorized after the disqualification period is over. In all cases, the Vendor's new application will be subject to the State agency's Vendor selection criteria and any Vendor limiting criteria in effect at the time of the re-application.
4. At the time of application, the Vendor shall provide the Department with a current list of all outlets obligated by this Contract. The information required is reflected in the Arizona WIC Program Vendor Application. Thereafter, the individual outlets may be added or deleted without affecting the status of any other outlet. However, the Vendor shall notify the Department in writing not less than **thirty (30) calendar days** prior to deleting an outlet (See Vendor Manual).
5. The Vendor shall notify the Department in writing not less than **thirty (30) calendar days** of any changes in store name, mailing address or telephone number.
6. The Vendor shall provide the Department with bank information including, but not limited to, the name, branch and account number for the Vendor's authorized bank for acceptance of all WIC food instruments. The Vendor shall notify the Department in writing of any change in the bank account not less than **thirty (30) calendar days** before the change takes place.
7. The Vendor shall comply with:
 - a. This Contract; the Arizona WIC Program Policy and Procedure Manual; the Vendor Manual and any amendments or additions thereto;
 - b. The federal statutes and regulations (as found in 42 U.S.C §1786 and 7 C.F.R. § 246) that govern the WIC Program.
 - c. The Vendor selection criteria throughout the agreement period, including any changes to the criteria. Using the current Vendor selection criteria, the State agency may reassess the Vendor at any time during the agreement period. The State agency will terminate the Vendor agreement if the Vendor fails to meet the current Vendor selection criteria, after allowing one opportunity to correct.
8. The federal statutes and regulations that govern the WIC Program, the Vendor Manual and any amendments or additions thereto, and the WIC Policy and Procedure Manual are incorporated herein by reference.
9. If any provision of the Contract conflicts with the requirements of federal statutes and regulations that govern the WIC Program, the federal statutes and regulations shall prevail. If any provision of the Contract conflicts with the requirements of the Vendor Manual, the Vendor Manual shall prevail.
10. Any provision of this Contract, or any document attached or incorporated by reference, that is waived or held to be invalid shall be severable from the remainder of this Contract and shall not affect any other provisions of this Contract. Any provision to this Contract that is found to be prohibited by law shall be severable and shall be in effect only to the extent such provision complies with the law.
11. Arizona law shall govern all aspects of this Contract not covered by the federal statutes and regulations or the Vendor Manual.
12. No condition or requirements contained in, or made a part of, this Contract shall be modified without an approved, written amendment to this Contract. Amendments shall be effective only if in writing and signed by all parties. The terms and provisions of this Contract shall remain in full force and effect except as amended and to the extent so amended.
13. The person signing this Contract on behalf of the Vendor represents and warrants to the Department that he/she has the legal authority to sign this Contract on behalf of the Vendor and that such signature obligates the Vendor (and the person signing) to perform under this Contract.

14. This Contract shall be contingent on the continued operation of the WIC Program by the Department.
 - a. The Department shall immediately notify the Vendor in the event of discontinuance of the WIC Program or unavailability of federal funds;
 - b. The Department shall not be liable for any food instruments accepted by the Vendor after such notification occurs.
15. The Vendor shall be considered an independent contractor, not an agent of the Department, the State, or the Federal government.
16. This Contract and Appendices attached represent the entire agreement between the parties. No alteration, modification or change of this Contract shall be claimed unless in writing and executed according to item #12, under the General Terms of this Contract.

GENERAL RESPONSIBILITIES

1. The Vendor shall designate a person for **each** outlet who shall be responsible for ensuring Vendor compliance with the terms of this Contract and the Vendor Manual.
2. The Vendor shall be held accountable for the actions or inactions of its owners, officers, managers, agents and employees as they relate to the requirements of the federal statutes and regulations that govern the WIC Program, the Vendor Manual and this Contract, which include, but are not limited to:
 - a. The handling of WIC transactions;
 - b. The redemption of WIC food instruments;
 - c. The provision of WIC supplemental foods.
3. The Vendor or Vendor's designated representative shall:
 - a. Attend mandatory regional Vendor training;
 - b. Accept in-store training concerning the WIC Program;
 - c. Provide training for all cashiers and other employees who handle WIC transactions;
 - d. Provide special or additional training to employees at the direction of the Department;

TRAINING

1. The Vendor shall have the right to request that the Department or its designee provide technical assistance and/or training on the WIC Program requirements, as needed.
2. The Department shall be responsible for providing Vendor training annually. At least one Vendor representative must participate in the annual training. The Department shall have sole discretion to designate the date, time and location of all interactive training. The Department shall provide at least one alternative date on which to attend such training.
3. The Department shall be responsible for sanction training. The first sanction training will be in-store training; if the Vendor receives another sanction that requires further training, the sanction training shall be held at a location designated by the Department.
4. Training provided by the Department will be documented on a Vendor Site Review or the Arizona WIC Program Vendor Training Acknowledgment form (See Vendor Manual).

FOOD SUPPLY

1. The Vendor shall maintain the types and amounts of stock required by the Arizona WIC Program based on the current Arizona WIC Programs Food List and the Arizona WIC Program's Minimum Stock Requirements (See Vendor Manual).
 - a. The Department shall provide the Vendor with the Arizona WIC Programs Food List and the Arizona WIC Program's Minimum Stock Requirements (See Vendor Manual);
 - b. The Department shall notify the Vendor in writing of any changes or amendments to the food list during the Contract period.
2. The Vendor shall maintain required stock from the **date it completes and submits the application packet, and if approved, throughout the entire contract period.** The application packet will include the Arizona WIC Program Vendor Application, Enrollment WIC Applicant Price/Stock Report, Contract and any required attachments.
3. The Vendor shall submit **timely** semi-annual or other WIC Vendor Price/Stock Reports as required by the Vendor Manual.

SANITATION AND FOOD SAFETY

1. The Vendor shall:
 - a. Maintain and display a current Health Code Operating Permit;
 - b. Maintain all other appropriate licenses and certificates;
 - c. Notify the Department immediately and in writing if, for any reason, any license or certificate is suspended, denied or revoked.
2. If the Department becomes aware that the Vendor has failed to maintain sanitation or food safety standards, it shall notify the proper regulatory office.
3. The Vendor shall **not** sell WIC approved infant formula to WIC participants/authorized representatives after the manufacturer's expiration date printed on the package/container.

ACCEPTING WIC FOOD INSTRUMENTS

1. When a WIC participant/authorized representative visits the authorized Vendor and collects the WIC food items listed on the food instrument, the Vendor shall redeem the food instrument in accordance with the procedures established in the Vendor Manual.
2. The Vendor shall:
 - a. Visibly post the "We Accept Arizona WIC Food Instruments" decal so that WIC participants/authorized representatives can identify your outlet as an authorized Arizona WIC Vendor;
 - b. Offer program participants or authorized representatives (parents or caretakers of infant and child participants, or proxies) the same courtesies offered to other customers;
 - c. Accept food instrumentS only from participants or authorized representatives (parents or caretaker of infant and child participants, or proxies);
 - d. Accept a food instrument only within the specified time period;
 - e. Utilize the current list of WIC food provided by the Department;
 - f. Only provide foodS specified on the food instrument at the current price or at less than the current price charged to other customers or at a stipulated contract price, whichever applies;
 - g. Ensure that the purchase price is entered on the food instruments and includes only the authorized supplemental food items actually provided and must be entered on the food instrument before it is signed.
 - h. Ensure that participant or authorized representative (parent or caretaker of and infant or child participant, or proxy) signs the food instrument in the presence of the cashier.
3. The Vendor may not:
 - a. Collect sales taxes or other taxes on authorized supplemental foods obtained with food instruments;
 - b. Provide unauthorized food items, non-food items, cash, or credit (including rainchecks) in exchange for food instruments;
 - c. Provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. (An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.)

DEPOSITING WIC FOOD INSTRUMENTS

1. The Department assigns all Vendors to specific Vendor classes/peer groups (See Vendor Manual). The Vendor will be paid based on the Vendor redemption average per Vendor class or local agency average for each food instrument type, but not more than the maximum stated on the food instrument.
2. The Department may make price adjustments to the purchase price on food instruments submitted by the Vendor for redemption to ensure compliance with the price limitations applicable to the Vendor.
3. The Vendor shall:
 - a. Mark all WIC food instruments "For Deposit Only";
 - b. Stamp all WIC food instruments with its WIC Vendor ID prior to deposit;
 - c. Endorse all food instruments to show:
 1. The identity of the Vendor;
 2. Name of the Vendor's bank;

3. The Vendor's bank account number;
4. That the payee and Vendor's endorsement matches (on replacement food instruments);
- d. Deposit in the Vendor's named bank for payment not later than:
 1. **Sixty (60) calendar days** of the first date to use for regular food instruments;
 2. **Thirty (30) calendar days** of the issue date for replacement food instruments.
4. Food instruments rejected due to a missing Vendor ID stamp shall be stamped and redeposited by the Vendor, one time only, not later than **sixty (60) calendar days** of the first date to use (See Vendor Manual).
5. The Vendor **shall not** submit WIC food instruments for payment that:
 - a. Are known to have been reported as either lost or stolen;
 - b. Were redeemed by another authorized Vendor or a store that is not currently authorized as a WIC Vendor;
 - c. Includes charges for foods not included on the Arizona WIC Programs Food List or for non-food items;
 - d. Includes charges for WIC foods in excess of the quantities specified on the food instrument;
 - e. Are false claim for reimbursement of WIC food instruments.

REJECTED FOOD INSTRUMENTS

1. The Vendor agrees that the Department may authorize the Banking Contractor to **reject** food instruments for payment to the Vendor for, but not limited to, the following reasons (See Vendor Manual):
 - a. The redeemed dollar value exceeds the maximum dollar value;
 - b. The redeemed dollar value is in excess of amount set by the Department as the maximum price permitted for food items listed;
 - c. The food instruments were deposited in the bank later than **sixty (60) calendar days** of the first date to use for regular food instruments or later than **Thirty (30) calendar days** of the issue date for replacement food instruments;
 - d. The food instruments do not have the signature of the participant or authorized representative (parents or caretakers of infant and child participants, or proxies);
 - e. The food instruments do not have a legible authorized Arizona WIC Vendor ID stamp number;
 - f. The food instruments have been altered;
 - g. The food instruments were accepted/deposited in the bank prior to the first date to use;
 - h. The food instruments were accepted/deposited in the bank after the last date to use.
2. The Department may establish a claim in the amount of the full purchase price of each food instrument that contained Vendor overcharges or other errors. The Department will provide the Vendor with an opportunity to justify or correct a Vendor overcharge or other error. The Vendor must pay any claim assessed by the Department. In collecting a claim, the Department may offset the claim against current and subsequent amounts to be paid to the Vendor. In addition to denying payment or assessing a claim, the Department may sanction the Vendor for Vendor overcharges or other errors in accordance with the Department's sanction schedule (See Vendor Manual).
3. The Vendor may request reimbursement from the Department not later than **ninety (90) calendar days** of the first date to use on the food instruments for any food instrument rejected for payment, other than food instruments rejected for missing Vendor ID stamp. Reimbursement of rejected food instruments shall be in accordance with the Vendor Manual (See Vendor Manual).
4. The Department shall not be obligated to reimburse the Vendor for food instruments reported as lost or stolen.
5. The Vendor **shall not** seek, verbally or in writing, full or partial payment or restitution from WIC participants/authorized representatives if the WIC food instrument(s) is not paid by the Banking Contractor or the Department or if the food instrument is damaged. Restitution shall not be requested even if the food instrument was not deposited.
6. The Department shall not be obligated to reimburse the Vendor for bank fees.

SUSPENSION/DISQUALIFICATION

1. The Department shall suspend or disqualify the Vendor for fraud or abuse of the WIC Program committed by the Vendor, its employees or agents. Suspension or disqualification may also result from accumulated points arising from violations specified in the Vendor Manual.
 - a. Prior to notification of disqualification, the Department shall determine if the disqualification would cause undue hardship to participants (See Vendor manual);
 - b. The Department shall not accept voluntary withdrawal of the Vendor as an alternative to disqualification.

2. The Vendor shall not raise the issue of participant/authorized representative access as a defense in any disqualification appeal or hearing.
3. The Vendor shall not raise the issue of financial hardship as a defense in any disqualification appeal or hearing.
4. The Vendor may be prosecuted under applicable Federal, State, or Local laws, in addition to suspension or disqualification from the WIC Program.
5. The revocation of the Vendor's Health Code Operating Permit shall result in disqualification from the WIC Program for the same length of time.
6. The Department shall disqualify a Vendor who has been disqualified from the Food Stamp Program. The length of disqualification shall be for the same amount of time as the Food Stamp Program disqualification, but may start at a later date. Such disqualification may not be subject to administrative or judicial review under the Arizona WIC Program. The Department may also disqualify a Vendor who has been given a Civil Money Penalty in lieu of disqualification for hardship in the Food Stamp Program.
7. Disqualification from the WIC Program may result in disqualification from the Food Stamp Program. (7 CFR Part 278.6.) Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.
8. A Vendor shall not be entitled to receive any WIC compensation for revenues lost as a result of disqualification for trafficking or illegal sales of firearms, ammunition, explosive or controlled substances.
9. A Vendor who is convicted is not entitled to receive any WIC compensation for revenues lost as a result of disqualification which was later overturned.
10. Suspensions that extend past the expiration of the Contract shall continue in force into the new contract period until the end of the suspension period. Vendors who wish to be considered for the new contract period must submit an application during the open enrollment period and if a new contract is granted, it shall not become effective until after the expiration of the suspension.
11. Disqualified Vendors shall be considered as having forfeited their authorization and will be required to apply for authorization after the expiration of their disqualification period during the next open enrollment period.
12. The Department may disqualify a Vendor for overcharging and for failure to pay back overcharges.
13. The Department shall notify the Vendor of the suspension or disqualification not later than **twenty-one (21) calendar days** prior to the effective date. However, the date for a disqualification for a conviction of trafficking or illegal sales of firearms, ammunition, explosives or controlled substances shall be effective on the date of receipt of the notice.

PENALTIES

1. A Vendor who commits fraud or abuse of the WIC Program is subject to prosecution under applicable Federal, State or local laws.
2. Those who have willfully misapplied, stolen, or fraudulently obtained WIC Program funds shall be subject to a fine of not more than \$10,000 or imprisonment for not more than five years or both, if the value of the funds is \$100.00 or more. If the value of the funds is less than \$100.00 the penalties shall include a fine of not more than \$1,000.00 or imprisonment for not more than one year or both according to the federal regulations that govern the WIC program and subject to State criminal penalties under A.R.S. § 13-2310 or other applicable laws.
3. Notwithstanding any provision of State law and in addition to any other penalty authorized by law, a court may order a person that is convicted of a violation of a provision of law, with respect to the trafficking of food instruments, funds, assets, or property that have a value of \$100.00 or more and that are subject of a grant or other form of assistance under this section, to forfeit to the United States all property as follows:
 - a. All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation described;
 - b. All property, real and personal, constituting, derived from, or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described above.

All property subject to a forfeiture under this clause, any seizure or disposition of the property, and any proceedings relating to the forfeiture, seizure, or disposition shall be subject to section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §853), other than subsection (d) of that section.

4. In addition to claims collection, the Department shall assess sanctions according to penalty points based on the Violations and Sanctions and Penalty Point System sections of the Vendor Manual. These sanctions may include, but are not limited to, mandatory training, suspension, disqualification, termination, or the assessment of civil money penalties, or any combination of sanctions. The Department does not have to provide the Vendor with prior warning the violations were occurring before imposing such sanctions (See Vendor Manual).
5. Any fine or civil money penalty imposed shall not exceed \$10,000 per violation and \$40,000 per investigation.
6. The Department may offer an installment method for payment of a civil money penalty.
7. The Department shall disqualify a Vendor for non-payment, only partial payment or untimely payment of an assessed civil money penalty.
8. The Department shall not accept voluntary withdrawal to avoid paying a civil money penalty.
9. The Department shall provide the Food Stamp Program with notice of WIC Vendor disqualification and assessment of civil money penalties.
10. The Department may notify the Vendor in writing upon identifying that the Vendor has failed to comply with this Contract, the Vendor Manual, or the USDA. At that time, the Department shall also notify the Vendor of the penalty to be assessed according to the Violations and Sanctions and Penalty Point System sections of the Vendor Manual.
11. The Department reserves the right to carry over penalty points from one Contract period to the next. The penalty points accumulated on the Vendor's record will be used to evaluate new applications, assess suspensions, terminations or disqualifications, or impose a civil money penalty.
12. The Department may:
 - a. Demand refunds for charges of more than the actual purchase price for authorized WIC foods;
 - b. Deny payment to the Vendor for improper food instruments, or demand refunds for payments already made on improper food instruments.
13. In the event that the Vendor does not remit payment as specified above in 12. a. and b., the Department shall withhold such amounts from any monies due to the Vendor.
14. The Department may deny payment for food instruments redeemed in violation of this Contract.

APPEALS

1. The Vendor shall have the right to appeal adverse actions of the Department, following the procedures set forth in the Vendor Manual for such an appeal.
 - a. Adverse action includes the denial of a Contract application, suspension of a Vendor, or disqualification of the Vendor from the WIC Program;
 - b. A Fair Hearing, which may include an Informal Settlement Conference, conducted by the Department, shall be held in accordance with the Vendor Manual;
 - c. The Vendor shall attend any administrative hearings, meetings, or conferences at the request of the Department and/or the request of the Department's designated authorized representative.
2. Adverse actions subject to an administrative review include:
 - a. Denial of authorization based on the Vendor selection criteria for competitive price; minimum variety and quantity of authorized supplemental foods; the Department's determination that the Vendor is attempting to circumvent a sanction; business integrity; current Food Stamp Program disqualification or civil money penalty for hardship; WIC Vendor sanction or a Food Stamp Program withdrawal of authorization or disqualification; or the application was submitted outside the timeframes during which applications are being accepted and processed as established by the Department;
 - b. Termination of the Vendor Contract for cause;
 - c. Disqualification;
 - d. Imposition of a fine or a civil money penalty in lieu of disqualification;
 - e. Termination of a Vendor contract because of a change in ownership or location or cessation of operations.

3. Adverse actions not subject to an administrative review include:
 - a. The validity or appropriateness of the Department's Vendor selection criteria;
 - b. The validity or appropriateness of the Department's participant access criteria and the Department's participant access determinations;
 - c. The Department's determinations whether a Vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the Vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;
 - d. The expiration of this Contract;
 - e. Disputes regarding food instrument payments and Vendor claims (other than the opportunity to justify or correct a Vendor overcharge or other error);
 - f. WIC disqualification based upon a Food Stamp Program disqualification.
4. The Department's administrative review procedures are available upon request and the applicable review procedures will be provided along with an adverse action subject to administrative review (See Vendor Manual).
5. Attorney's Fees and Costs

If a Vendor initiates an action, appeal, or lawsuit against the Department relating to the terms of this Contract in any administrative or judicial tribunal of competent jurisdiction, and the Department prevails, the Vendor shall pay the Department's reasonable attorneys' fees and costs. The administrative or judicial tribunal of competent jurisdiction where the action, appeal, or suit was adjudicated can determine the Department's attorneys' fees (i.e., \$110.00 up to \$200.00 an hour) and costs. The Department is considered to prevail when:

- a. The Vendor's position was not substantially justified; and
- b. The Department prevailed as to the most significant issue or set of issues.

The Department shall submit its petition for reasonable attorneys' fees (i.e., \$110.00 up to \$200.00 and hour) and costs to the administrative or judicial tribunal of competent jurisdiction within **forty-five (45) calendar days** after the final decision. The Department's petition shall provide the following information to the administrative or judicial tribunal:

- a. Evidence of the Department's eligibility for attorneys' fees and costs;
- b. The amount sought; and
- c. An itemized statement from the attorney(s) and expert(s) stating:
 - 1) The actual time spent representing the Department; and
 - 2) The rate at which the fees were computed.

DISPUTE RESOLUTION

This Contract shall be subject to arbitration to the extent required by A.R.S. § 12-1518.

- a. Such arbitration shall follow the rules and procedures described in A.R.S. § 12-133;
- b. The Administrative Hearing process is available as authorized in the Vendor Manual.

CHANGE IN OWNERSHIP

1. This Contract shall be null and void if and when:
 - a. The Vendor ceases operations;
 - b. Ownership (whole or controlling interest) of the Vendor's outlet(s) change;
 - c. The Vendor files for bankruptcy, causing ownership or control of the outlet(s) to change;
 - d. The Vendor's store location changes (See Vendor Manual).
2. The Vendor is **not** entitled to appeal to any administrative or judicial tribunal of competent jurisdiction if any of the events in one (1) occur.
3. The Vendor shall notify the Department in writing, not less than **thirty (30) calendar days** prior to the date:
 - a. The Vendor ceases operations;
 - b. Ownership (whole or controlling interest) of the Vendor's outlet(s) change;
 - c. If the Vendor files for bankruptcy causing ownership or control of the outlet(s) to change;
 - d. The Vendor's store location changes (See Vendor Manual).
4. Any new owner(s) or operator(s) of the Vendor's outlet must re-apply to become a WIC Vendor and shall be subject to the Department's Vendor Evaluation Process as specified in the Vendor Manual.

5. The Vendor ID Stamps are the exclusive property of the Department and shall be returned within **ten (10) calendar days** when this Contract becomes void, is terminated, or expires without being renewed.

TERMINATION, NULLIFICATION, AND EXPIRATION OF THE CONTRACT

1. Neither the Vendor nor the Department has an obligation, nor an entitlement to renew the Contract.
2. The Vendor **or** the Department may terminate this contract **for cause** after providing a minimum of **fifteen (15) calendar days** advance written notice. Termination and/or disqualification may result from accumulated points arising from violations specified in the Vendor Manual. Cause may include, but is not limited to:
 - a. Low volume of WIC sales (See Vendor Manual);
 - b. Excessive prices of WIC items;
 - c. Demonstrated unwillingness or inability to conform to Vendor Site Review corrective action recommendations. For example: A Vendor's inability to maintain the required minimum stock and/or variety of WIC foods;
 - d. Violations of this Contract, Vendor Manual, State or Federal Statutes or Regulations;
 - e. Fraud;
 - f. Failure to maintain business integrity.
3. The Department may, at its sole discretion, immediately terminate the Contract if it establishes that the Vendor provided false information on the Arizona WIC Program Vendor Application, Enrollment WIC Applicant Price/Stock Report, Contract or any required attachments.
4. In addition to other rights set forth elsewhere in this Contract, the Department reserves the right to terminate the Contract without cause effective **thirty (30) calendar days** after mailing written notice of termination by certified mail with a return receipt requested or by Department contracted courier service to the Vendor.
5. The expiration of this Contract is **not** subject to appeal to any administrative or judicial tribunal of competent jurisdiction.
6. The Department shall provide not less than **fifteen (15) calendar days** advance written notice of the expiration of the Contract.

INSPECTION AND AUDIT

1. The Vendor agrees to comply with inspection and audit as described in A.R.S. §35-214 and elsewhere in this Contract, and provide a corrective action plan for deficiencies found, if required.
2. The Vendor shall be monitored for compliance with regulations as specified by the USDA and the Department.
3. Monitoring shall include, but is not limited to, the following:
 - a. Inspections performed by personnel from the Department and/or Federal Food and Nutrition Service, or authorized representatives including local agencies;
 - b. Unannounced inspection visits;
 - c. Unannounced, anonymous compliance buys.
4. During inspection visits, the Vendor shall provide access to negotiated WIC food instruments, shelf prices, and inventory records of authorized foods, and food storage areas.
5. Inspection visits may be made at any time during normal business hours during the Contract period. An initial visit will be made **before** the Contract is processed by the Department. Any violation of WIC Program requirements including, but not limited to, maintaining the required minimum stock of approved food items, may eliminate the Vendor from inclusion in the WIC Program or disqualify the Vendor from the WIC Program according to the sanctions identified in the Vendor Manual.
6. Compliance buys, made by authorized personnel, shall be conducted at the Department's discretion.

RECORD KEEPING

1. In accordance with ARS §35-214, the Vendor shall retain records including all books, accounts, reports, files, purchase invoices, inventory records, records used for federal tax reporting purposes and other records relating to the performance of this Contract for a period of five (5) years from the date of, whichever is later:
 - a. Expiration of this Contract;
 - b. Termination of this Contract;
 - c. Final payment under this Contract.
2. The Vendor shall retain records related to disputes, litigation, settlement of claims, or exceptions of the Director arising out of the performance of this Contract until such time as these matters have been finally resolved or five (5) years, whichever is later.
3. The Vendor agrees that the Department, its agents, and any agent of the State or Federal Government, shall have access during business hours to the Vendor's books, documents, and records related to transactions under this Contract.
4. The Vendor at its own expense shall produce a legible **copy** of all such records at the Department's Office of Nutrition Services, WIC Program, upon request of:
 - a. The Department;
 - b. The Federal Food and Nutrition Service.
5. The Vendor shall retain and produce for inspection and audit the **original** of all such records when needed to verify the authenticity of a copy.
6. If any subcontracts, the Vendor shall include a provision that the subcontractor agrees:
 - a. To meet the requirements for facilities and record keeping as applicable to Vendors;
 - b. That records pertaining to WIC transactions shall be retained as provided above;
 - c. That the Department and any other appropriate agent or representative of the State or Federal government shall:
 - 1) Have access to the subcontractor's facilities for purposes of inspection;
 - 2) Have the right to examine all such records as provided above.
 - d. That the subcontractor agrees to comply with the terms of this Contract, and any applicable state or federal statutes or regulations pertaining to the WIC Program.

RELEASE OF VENDOR RECORDS

1. The Department has the right to coordinate Vendor monitoring with the Inter-Tribal Council of Arizona (ITCA) and Navajo Nation WIC Programs. This shall include, but is not limited to, joint investigations, compliance investigations and access to Vendor records.
2. The Department may share records and information concerning the Vendor's participation in the WIC Program with other entities responsible for oversight, management or enforcement of the WIC Program. This provision includes, but is not limited to, law enforcement agencies.

INDEMNITY

1. The Vendor shall, at all times, indemnify, defend and holds harmless the State and/or any of its agents, officials and employees from any and all claims, demands, suits, actions, proceedings, losses, costs and/or damages of every kind and description, including attorney's fees and/or litigation expenses brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the Vendor, its employees agents or representatives, or subcontractors, their employees agents or representatives in connection with or incident to the performance of this Contract or arising out of workers compensation claims, or unemployment compensation claims of employees of the Vendor and/or its subcontractor or claims under similar such laws or obligations. The Vendor's obligations and responsibilities under this section shall not extend to any liability caused by the sole negligence of the State or its employees.
2. The Vendor shall indemnify, defend and hold harmless the Department from any claim, liability or expense caused by the Vendor's default under this Contract.

PROHIBITION AGAINST DISCRIMINATION

1. Both the Vendor and the Department agree to comply with all aspects of anti-discrimination legislation, including all Federal legislation, A.R.S. § 41-1463, and Arizona Governor's Executive Order 99-4.
 - a. The Vendor shall not discriminate because of race, color, disability, age, national origin, or gender in any interactions with WIC recipients, representatives of the Department, or suppliers;
 - b. The Department shall not discriminate because of race, color, disability, age, national origin, or gender in any interactions with Vendors or Vendor applicants;
 - c. The Vendor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990, and its amendments.
2. Vendors shall offer WIC participants/authorized representatives the same courtesies offered to other customers.

ANTITRUST VIOLATIONS

The Vendor, the Department, and the State recognize that in actual practice overcharges resulting from antitrust violations are in fact borne by the purchaser. Therefore, the Vendor hereby assigns to the Department and the State any and all claims for such overcharges.

NOTICE

Whenever notice is required by the terms of this Contract, unless otherwise specified, the notice shall be in writing; shall be delivered in person or by certified mail with a return receipt requested or by a Department contracted courier service; and shall be directed to the person(s) and address(es) specified for such purpose on the execution page of this Contract or to such other person(s) and/or address(es) as either party may designate to the other party by written notice.

CONFLICT OF INTEREST

1. The Vendor ensures that no conflict of interest shall exist with either the Department or local agencies. A conflict of interest relates to the standard of ethical conduct that no officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction, or professional activity or incur any obligation of any nature which is in conflict with the discharge of a person's duties.
2. The Department shall have the right to cancel this Contract as authorized by A.R.S. § 38-511 immediately upon notification of the parties should such conflict of interest arise after the acceptance of this Contract by the parties. A.R.S. § 38-511 provides:
 - a. Such cancellation shall occur without any further obligation;
 - b. Conflict of interest shall include, but not limited to, situations where any person significantly involved in initiating, negotiating, drafting or creating the Contract on the behalf of the State is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of or consultant to any other party to this Contract with respect to the subject matter of this Contract;
 - c. Notification shall occur when written notice from the Governor is received by any party to this Contract, unless the notice specifies a later time.

VENDOR CONTRACT

ARIZONA DEPARTMENT OF HEALTH SERVICES

APPLICANT

I, the undersigned, have read and understand all rules of the Arizona WIC Program in addition to the terms and conditions of this contract and the attachments. I understand that I will be bound by these requirements.

The undersigned representative has legal authority to obligate this Vendor.

BY _____
Signature

Raul V. Muñoz, Jr. M.P.H.

Date

Arizona Department of Health Services

150 North 18th Avenue, Suite 310

Phoenix, Arizona 85007

1 (866) 737-3935
Telephone Number

Signature Date

Print or Type Name and Title of Authorized Person

Store Name

Street

City State Zip Code

County/Reservation

()
Telephone Number